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HALE AND DORR LLP  
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November 5, 2002

FinCEN  
P.O. Box 39  
Vienna, Virginia 22183-1618  
Attention: NPRM - Section 352 Unregistered Investment  
Company Regulations  
regcomments@fincen.treas.gov

Re: NPRM - Section 352 Unregistered Investment Company Regulations

Ladies and Gentlemen:

Hale and Dorr LLP appreciates this opportunity to comment on the proposed rules regarding anti-money laundering programs for unregistered investment companies under Section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA Patriot Act"), which were published on September 18, 2002 (the "proposed rules"). We represent numerous venture capital funds, which constitute "unregistered investment companies" for purposes of the USA Patriot Act.

Redemption Rights

Hale and Dorr LLP supports the provisions of the proposed rules which would include in the definition of "unregistered investment company" only those investment companies that give an investor a right to redeem any portion of its ownership interest within two years after the date on which the interest was purchased. The intended effect of the definition is to exempt most venture capital funds from those provisions of the proposed rules which would require adoption of anti-money laundering programs by unregistered investment companies. FinCEN has observed in its discussion of the background of the proposed rules, and we concur, that venture capital funds are not likely vehicles for money laundering activities, as investors in such funds generally have no ability to convert their interests in such entities into cash or cash equivalents at the investor's option for a significant time period after acquisition of such interests.

Most venture capital fund governing documents permit certain investors to redeem their interests at any time under limited circumstances, which are generally beyond the control of the investors in such funds. We believe that such limited redemption rights should not be considered "redemption rights" for purposes of the proposed rules, and that the existence of such limited rights should not require venture capital funds to adopt anti-money laundering programs.

Interests in many venture funds are purchased by regulated institutional investors, including banks (or affiliated entities), endowments, foundations, pension funds which are

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subject to The Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or similar state statutes, and foreign investors. Such investors generally obtain, in connection with their investments in venture funds, the right to cause the fund to redeem their interests in the event that such investment results in unintended consequences to the investor based on changes in laws or regulations or the conduct of the business of the fund in a manner which is not anticipated at the time of the initial investment. For example:

- Most pension plan investors require that they have a right to require redemption of their interests if their continued participation in the fund becomes illegal under ERISA or if the fund assets constitute "plan assets" under ERISA.
- Investors which are subject to regulation under state or federal banking statutes may require a redemption right if their continued participation would violate such statutes, or if the investments made by the fund (which are not known at the time the investor purchases its interest in the fund) do not satisfy certain requirements (such as, for example, community reinvestment requirements).
- Foreign investors may require that they have redemption rights in the event that, as a result in a change of law or the nature of the investments made by the fund, they are subjected to adverse income tax consequences or income tax reporting requirements in the United States as a result of their ownership of an interest in the fund.
- Foundations and endowments may require a redemption right in the event that their continued participation in the fund would have adverse income tax consequences, as a result of changes in applicable laws or the particular investments made by the fund.

Although most funds attempt to eliminate or restrict such redemption rights, industry practice in the venture fund area has evolved so that many, if not most, funds include limited redemption rights similar to those described above. It is important to note that in virtually all such cases, the investor's right to redemption is conditioned upon the occurrence or existence of some event or circumstance which is *beyond the control of the investor*, such as a change in laws, or the particular investments made by the fund (over which an investor generally has no approval rights). In our experience, rarely, if ever, do such redemption rights actually become exercisable.

We would like to request that FinCen, in the final version of the rules, clarify that limited redemption rights which are conditioned upon the occurrence or existence of an event or circumstance which is beyond the control of a fund investor do not constitute a right to redeem an interest for purposes of the definition of "unregistered investment company." Accordingly, unregistered investment companies which include such limited redemption rights, exercisable at any time (including during the two-year period following the acquisition of the investor's interest), would still qualify for the exemption contemplated by the proposed rules, and would not be required to adopt anti-money laundering programs.

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We would again like to express our support for FinCEN's proposals regarding anti-money laundering programs. If we can be of any assistance or if you would like to discuss the comments set forth in this letter, please do not hesitate to contact Sarah Rothermel of this office at (617) 526-6512. Best regards.

Very truly yours,

*Hale and Dorr LLP*

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